

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

KENDALL JOY,)	
)	
Petitioner,)	
)	
v.)	No. 2:16-cv-02367-STA-tmp
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

**ORDER CONSTRUING LETTER AS MOTION
AND
TRANSFERRING MOTION TO COURT OF APPEALS
AS SECOND OR SUCCESSIVE PETITION**

On February 18, 2020, Petitioner Kendall Joy filed a letter in the instant case asserting that he no longer qualifies for an enhanced sentence under the Armed Career Criminal Act, 18 U.S.C. § 924(e)(1). (ECF No. 29.) He requests that the Court “[r]eopen his sentence . . . or in the alternative, notify the Sixth Circuit and agree to hear his request for a successive 2255[.]” (*Id.* at 3.) The Court construes the letter as a Motion pursuant to 28 U.S.C. § 2255.

Petitioner previously filed a § 2255 Motion. (ECF No. 1.) The Court denied Joy’s Motion and denied a certificate of appealability in an order entered on August 17, 2016. (ECF No. 8.) On March 20, 2017, the United States Court of Appeals for the Sixth Circuit likewise denied Joy a certificate of appealability. (ECF No. 16.) The Motion now before the Court presents a new ground for habeas relief, and therefore constitutes a second or successive petition. *See Gonzalez v. Crosby*, 545 U.S. 524, 532 (2005) (holding a claim filed subsequent to a first § 2255 petition which asserts a “new ground for relief” is a second or successive petition) (citing 28 U.S.C. § 2244(b)).

“Before a second or successive application . . . is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.” 28 U.S.C. § 2244(b)(3)(A). Petitioner has not yet obtained authorization from the Sixth Circuit to file his new claim. The motion is therefore **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit. *See In re Sims*, 111 F.3d 45, 47 (6th Cir. 1997) (holding that district courts should transfer to the appellate court second or successive petitions filed without authorization from the Sixth Circuit).

IT IS SO ORDERED.

s/ S. Thomas Anderson
S. THOMAS ANDERSON
CHIEF UNITED STATES DISTRICT JUDGE

Date: February 19, 2020.